

## **Polls, Advisers part of 'Overhead,' GOP Says**

Legality of PAC's Actions may hinge on a Legal Definition

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Eleven years ago the Texas Ethics Commission first advised political action committees such as Texans for a Republican Majority when they shouldn't spend corporate money: to pay for meetings to interview and evaluate candidates; to pay staffers to do political work; and to raise money for candidates, among other things. Although Texans for a Republican Majority did all three, and then some, in the 2002 elections, the committee's lawyers argue that the group legally spent thousands of corporate dollars to raise money, organize events, pay telemarketers to identify voters, evaluate candidates and pay a part-time executive, John Colyandro, almost \$70,000 to oversee it all.

"We contend what John Colyandro was doing was administering for our PAC, and not expressly advocating for any specific campaign," said Terry Scarborough, an Austin lawyer representing former state Rep. Bill Ceverha, the treasurer of the Republican majority committee.

Although the Ethics Commission administers the campaign finance laws, its legal opinions are only advisory. Judges ultimately must interpret the state law underpinning a grand jury probe and a \$1 million civil lawsuit brought by four Democratic candidates.

The law prohibits political committees from spending corporate or labor union money on campaign expenditures, but it allows the money to be spent to establish the committee and to pay its administrative expenses. In 1993 the Ethics Commission defined administrative expenses as overhead such as rent, utilities and general office supplies. Taking one line from a 1994 advisory opinion, Scarborough's argument in the civil lawsuit is that corporate money spent on pollsters, telemarketers and consultants can be considered an administrative expense because it wasn't "tied directly" to any campaign.

Fred Lewis, a lawyer who lobbies on campaign finance issues, said Scarborough is trying to create a new standard for spending corporate money for political purposes.

"The standard is, 'Is it an administrative expense?' -- not whether it benefits a campaign directly" said Lewis with Campaigns for People. "The standard he created is not the standard in Texas or anywhere else."

These conflicting views are rooted in the Ethics Commission's opinions, which will be a starting point for a judge.

The Ethics Commission addressed the administrative expense issue in 1993 in Ethics Advisory Opinion 132.

"Staff salaries would in general be considered an administrative expense," the commission wrote. "However, if a staff member is compensated for engaging in political activities, such as solicitation of contributions in connection with an election, the portion of the salary attributable to those activities would not be an administrative expense."

Colyandro didn't raise money himself. However, he hired or supervised the committee's fund-raisers, who were all paid with corporate money, even when one, Susan Lilly, raised money for candidates and forwarded it to the campaigns.

The opinion also included other examples of political activity for which corporate money could not be used: holding candidate receptions; meeting with candidates to interview and evaluate them; and raising money from people other than members of the organization.

In its mission statement, Texans for a Republican Majority said it would evaluate candidates, educate them on the issues and support them with donations. It paid a consultant to help Colyandro make recommendations to the committee's board, including U.S. House Majority Leader Tom DeLay.

The Texas committee also raised money from people outside its organization.

It hired Warren RoBold, who raised corporate money for other organizations headed by DeLay, to raise corporate money. He was very successful. About 40 percent of the Texas committee's \$1.5 million came from corporations. The remainder was from individuals.

Ethics Advisory Opinion 132 also cited examples of what it would consider to be an administrative expense: office rent, utilities and general office supplies.

The guiding principle, according to the opinion, is whether it's an administrative expense that the committee would incur regardless of whether the group was engaged in politics.

Scarborough cites Ethics Advisory Opinion 216, issued in 1994, as rebuttal.

In Opinion 216, the Ethics Commission was asked if an incorporated trade association could use corporate money to pay a late fine assessed against its political committee. The answer was yes. Scarborough's legal argument centers on one sentence in that opinion that referred to Opinion 132. The commission wrote that in Opinion 132, "we determined that expenses tied directly to a political committee's support for or opposition to candidates or measures would not be administrative expenses."

Scarborough argues that corporate money can be spent to pay Colyandro, the pollsters, the telemarketers and the fund-raisers because their activities were not "tied directly" to a specific campaign.

Colyandro and his lawyer did not comment for this story, but in earlier interviews Colyandro said he decided whether an expense was administrative or political.

For example, Colyandro said he would pay for a poll with corporate money if the results were for the committee and not to be shared with the campaigns. If a poll was shared, then Colyandro said he would use money donated by individuals.

If the courts don't agree with the Republican committee's definition of administrative expenses, Scarborough offers another argument from another opinion.

In Ethics Advisory Opinion 198, also from 1994, the Ethics Commission was asked whether a corporation may spend its money to communicate a candidate's voting records, position on the issues, endorsements and poll results to the corporation's employees, retirees and their family members.

The state commission said a corporation is prohibited from spending corporate money "only if the communication 'expressly advocates' the defeat or election of an identified candidate . . ." Whether the communication would constitute express advocacy would depend on the precise language of the communication, the opinion concluded.

Although Texans for a Republican Majority was created to help elect Republicans to the Legislature, Scarborough argues that when it spent corporate money on telemarketers, fund-raisers and consultants, the group was not expressly advocating a candidate's election or defeat.

For example, three weeks before the election, the committee used corporate money to pay telemarketers \$65,000 to locate GOP and swing voters in 15 legislative districts. Then the committee paid the same telemarketing firm \$48,039 from individual contributors to call those voters in the final week of the campaign to urge them to vote for the committee's candidates. Lewis said Opinion 198 applies to corporations, not political action committees.

Scarborough disagrees: "I'm saying it applies to a PAC because we took \$600,000 in corporate money."

Lewis argues that the primary purpose of a PAC, which is regulated by the state, is political advocacy.

"If you are a PAC," Lewis said, "you don't get to make the 'express advocacy' argument."